

Invitation to Comment

Title	Telephone Appearances in Civil Cases (amend Cal. Rules of Court, rules 3.670 and 3.722 and standard 3.1)
Summary	<p>The ability of parties and attorneys to appear by telephone at hearings and conferences in civil cases has increased access to the courts and reduced litigation costs.</p> <p>To further improve the availability of telephone appearances, rule 3.670 would be amended. The rule would permit parties to appear by telephone at case management conferences, unless the court determines on a hearing-by-hearing basis that a personal appearance is required. Other changes would be made to the rule to clarify the types of hearings and conferences at which parties may appear by telephone. The time for a party to provide notice of intent to appear by telephone would be shortened, and a provision would be added permitting a party to join in a request to appear by telephone.</p> <p>Rule 3.722 on case management conferences and standard 3.1 would be amended to be consistent with the amendments to rule 3.670.</p>
Source	<p>Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair</p> <p>Case Management Subcommittee Hon. Robert B. Freedman, Chair</p>
Staff	Patrick O'Donnell, Committee Counsel, 415-865-7665, patrick.o'donnell@jud.ca.gov
Discussion	<p><i>Background</i></p> <p>Rule 3.670 is the principal rule authorizing telephone appearances in civil cases.¹ This rule, when it was originally adopted, provided for pilot projects in telephone appearances. Amendments have expanded the scope and application of the rule. It presently allows self-represented parties as well as attorneys to appear by telephone. It applies to all courts. The rule permits parties to appear by telephone at most hearings and conferences in civil cases, with certain exceptions.</p> <p><i>The Proposed Amendments</i></p> <p>This proposal would modify the current telephone appearance rule in several respects.</p>

¹ A separate rule authorizing telephone appearances in child support proceedings was added, effective July 1, 2005. (See Cal. Rules of Court, rule 5.324.)

First, a new opening subdivision would be added to rule 3.670. It would state that the intent of the rule is to promote uniformity of practices and procedures relating to telephone appearances in civil cases. It would also include a policy statement that courts, to the extent feasible, should permit parties to appear by telephone at appropriate conferences, hearings, and proceedings in civil cases. (See amended rule 3.670(a).)

Second the rule would be amended to specify that it applies to all general civil cases, except complex cases, and to unlawful detainer and probate proceedings. (See amended rule 3.670(b).) Comments are specifically invited as to whether any further changes to rule 3.670 are needed to clarify how it should apply in probate proceedings.

Third, the provision, which currently allows parties to appear by telephone in conferences and hearings, would be expanded to include proceedings. At the same time, this provision would be amended to specifically identify the types of hearings, conferences, and proceedings at which a party may appear by telephone: (1) case management conferences; (2) trial setting conferences; (3) hearings on law and motion, except for motions in limine; (4) hearings on discovery motions; (5) conferences to review the status of arbitration or mediation; and (6) hearings to review the dismissal of actions. (See amended rule 3.670(c).) This list, it should be noted, includes case management conferences. This is a significant change from the current version of rule 3.670, under which parties are required to appear in person at case management conferences unless the court permits telephone appearances.

Fourth, the rule would be amended to replace the present list of “exceptions” with a list of the types of conferences, hearings, and proceedings at which parties are required to appear in person: (1) trials and hearings at which witnesses are expected to testify, (2) hearings on temporary restraining orders, (3) settlement conferences, (4) trial management conferences, (5) hearings on motions in limine, and (6) hearings on petitions to confirm the sale of property under the Probate Code. (Amended rule 3.670(d)(1)–(6).) In addition, the rule would provide that personal appearances would be required for (1) applicants seeking ex parte orders, (2) persons ordered to appear to show cause why sanctions should not be imposed for violation of a court order or rule, and (3) persons ordered to appear in a order or citation issued under the Probate Code. (Amended rule 3.670(d)(7)–(9).)

Fifth, new subdivision (e) sets forth the court's discretion to modify the provisions in (c) permitting telephone appearances and in (d) requiring personal appearances. In exercising its discretion, the court should consider the general policy favoring telephone appearances in civil cases. (Amended rule 3.670(e)(1).) Under subdivision (e), the court may require a party to appear in person at a hearing, conference, or proceeding listed in (c) if the court determines on a hearing-by-hearing basis that a personal appearance would materially assist in the determination of the proceedings or in the effective management or resolution of the particular case. (Amended rule 3.670(e)(2).) Also, the court may permit a party to appear by telephone at a hearing, conference, or proceeding listed in (d) if the court determines that a telephone appearance is appropriate. (Amended rule 3.670(e)(3).)

Sixth, a new provision would be added specifying that if, at any time during a hearing, conference, or proceeding conducted by telephone, the court determines that a personal appearance is necessary, the court may continue the matter and require a personal appearance. (Amended rule 3.670(f).) This provision is based on a similar provision in the current telephone appearance rule for hearings and conferences in child support cases. (See rule 5.324(i).)

Seventh, the current notice provisions for telephone appearances would be modified. Rule 3.670 presently requires a party that chooses to appear by telephone to give notice of intent to appear "at least five court days before the appearance." This would be changed to "at least three court days before the appearance." (Amended rule 3.670(g)(1)(B).) This shortened notice time appears to be workable under contemporary telephone appearance practices.

Eighth, a new provision would be added that would allow a party that has not given the preceding notice to join in the request to appear by telephone. A party may join by notifying the court and all other parties that it intends to appear by telephone no later than noon on the court day before the appearance. (Amended rule 3.670(g)(2).)

Ninth, a new provision would be added stating that the court, on a showing of good cause, may permit a party to appear by telephone even if the party has not given the notice required under (g)(1) or (2). (Amended rule 3.670(g)(4).) This recognizes that there may be circumstances under which a party who may not have anticipated the need to appear by telephone now may need to do so.

Finally, the provision in the rule concerning notice by the court that a personal appearance is required would be modified to be compatible with contemporary practice and procedure. The rule, instead of requiring notice by telephone, would provide for “reasonable notice.” (Amended rule 3.670(h).) A sentence would be added: “The court may direct the court clerk, a court-appointed vendor, a party, or an attorney to provide the notification.”

Related Amendments

If the proposed amendments are made to rule 3.670, rule 3.722 relating to case management conferences and standard 3.1 should be amended to be consistent with the new provisions in the telephone appearance rule.

Specifically, rule 3.722(c) should be amended to state that parties must appear at case management conferences either by telephone or personally as provided in rule 3.670. The provision in subdivision (c) based on current rule 3.670 that a party requires the permission of the court to appear telephonically would be eliminated.

In standard 3.1, subdivision (c) should be eliminated. It currently states that courts should specify by local rule or policy the types of motions they consider particularly suitable for telephone appearances. This provision should be repealed as obsolete and inconsistent with amended rule 3.670 because that rule is intended to create uniformity of practice and will specify the types of matters at which parties may appear by telephone throughout the state.

Attachment

Rules 3.670 and 3.722 and standard 3.1 of the California Rules of Court would be amended, effective January 1, 2008, to read:

1 **Rule 3.670. Telephone appearance**

2
3 **(a) Policy favoring telephone appearances**

4
5 The intent of this rule is to promote uniformity in the practices and
6 procedures relating to telephone appearances in civil cases. To improve
7 access to the courts and reduce litigation costs, courts should permit parties,
8 to the extent feasible, to appear by telephone at appropriate conferences,
9 hearings, and proceedings in civil cases.

10
11 **(a)(b) Application**

12
13 This rule applies to all general civil cases as defined in rule 1.6, except
14 complex cases, and to unlawful detainer and probate proceedings.

15
16 **(b)(c) General provision authorizing parties to appear by telephone**

17
18 ~~Except as provided in (c), a party may appear by telephone in any conference~~
19 ~~or hearing at which witnesses are not expected to be called to testify. Except~~
20 as provided in (e)(2), a party may appear by telephone at the following
21 conferences, hearings, and proceedings:

- 22
23 (1) Case management conferences, provided the party has made a good
24 faith effort to meet and confer and has timely served and filed a case
25 management statement before the conference date;
26
27 (2) Trial setting conferences;
28
29 (3) Hearings on law and motion, except motions in limine;
30
31 (4) Hearings on discovery motions;
32
33 (5) Conferences to review the status of an arbitration or mediation; and
34
35 (6) Hearings to review the dismissal of an action.

36
37 **(e)(d) Exceptions Required personal appearances**

38
39 Except as provided in (e)(3), a personal appearance is required for hearings,
40 conferences, and proceedings not listed in (c), including the following:

- 1
2 (1) Trials and hearings at which witnesses are expected to testify;
3
4 (2) Hearings on temporary restraining orders;
5
6 ~~(1)(3) Settlement conferences, unless the court orders otherwise;~~
7
8 ~~(2) Case management conferences, unless the court permits telephone~~
9 ~~appearances at those conferences; and~~
10
11 ~~(3) Any hearing or conference for which the court, in its discretion,~~
12 ~~determines that a personal appearance would materially assist in a~~
13 ~~determination of the proceeding or in resolution of the case. The court~~
14 ~~must make this determination on a case by case basis.~~
15
16 (4) Trial management conferences under rule 3.1408;²
17
18 (5) Hearings on motions in limine; and
19
20 (6) Hearings on petitions to confirm the sale of property under the Probate
21 Code.

22
23 In addition, except as provided in (e)(3), a personal appearance is required
24 for the following persons:

- 25
26 (7) Applicants seeking an ex parte order, except when the applicant is
27 seeking an order:
28
29 (A) For permission to file a memorandum in excess of the applicable
30 page limits;
31
32 (B) To set hearing dates on alternative writs and orders to show cause;
33 or
34
35 (C) By stipulation of the parties;
36
37 (8) Persons ordered to appear to show cause why sanctions should not be
38 imposed for violation of a court order or a rule; or
39

² Proposed new rule 3.1408 on trial management conferences is being circulated for public comment at the same time as this rule.

1 (9) Persons ordered to appear in an order or citation issued under the
2 Probate Code.

3
4 At the proceedings under (7), (8), and (9), parties who are not required to
5 appear in person under this rule may appear by telephone.

6
7 **(e) Court discretion to modify rule**

8
9 (1) Policy favoring telephone appearances in civil cases

10
11 In exercising its discretion under this provision, the court should
12 consider the general policy favoring telephone appearances in civil
13 cases.

14
15 (2) Court may require personal appearances

16
17 The court may require a party to appear in person at a hearing,
18 conference, or proceeding listed in (c) if the court determines on a
19 hearing-by-hearing basis that a personal appearance would materially
20 assist in the determination of the proceedings or in the effective
21 management or resolution of the particular case.

22
23 (3) Court may permit appearances by telephone

24
25 The court may permit a party to appear by telephone at a hearing,
26 conference, or proceeding listed in (d) if the court determines that a
27 telephone appearance is appropriate.

28
29 **(f) Need for personal appearance**

30
31 If, at any time during a hearing, conference, or proceeding conducted by
32 telephone, the court determines that a personal appearance is necessary, the
33 court may continue the matter and require a personal appearance.

34
35 **(d)(g) Notice by party**

36
37 (1) A party choosing to appear by telephone at a hearing, conference, or
38 proceeding under this rule must either:

39
40 (A) Place the phrase “Telephone Appearance” below the title of the
41 moving or opposing papers; or

1 (B) At least ~~five~~ three court days before the appearance, notify the
2 court and all other parties of the party's intent to appear by
3 telephone. If the notice is oral, it must be given either in person or
4 by telephone. If the notice is in writing, it must be given by filing
5 a "Notice of Intent to Appear by Telephone" with the court at
6 least ~~five~~ three court days before the ~~hearing~~ appearance and by
7 serving the notice at the same time on all other parties by personal
8 delivery, fax transmission, express mail, or other means
9 reasonably calculated to ensure delivery to the parties no later
10 than the close of the next business day.

11
12 (2) If after receiving notice from another party as provided under (1) a
13 party that has not given notice also decides to appear by telephone, the
14 party may do so by notifying the court and all other parties that have
15 appeared in the action of its intent to appear by telephone no later than
16 noon on the court day before the appearance.

17
18 ~~(2)~~(3) If a party that has given notice that it intends to appear by telephone
19 under (1) subsequently chooses to appear in person, the party must so
20 notify the court and all other parties that have appeared in the action, by
21 telephone, at least two court days before the ~~hearing~~ appearance.

22
23 ~~(3)~~(4) The court, on a showing of good cause, may permit a party to appear
24 by telephone at a hearing, conference, or proceeding even if the party
25 has not given the notice required under (1) or (2).

26
27 **(e)(h) Notice by court**

28
29 After a party has requested a telephone appearance under ~~(d)(g)~~, if the court
30 requires the personal appearance of the party, the court must ~~notify~~ give
31 reasonable notice to all parties by telephone at least one court day before the
32 hearing. The court may direct the court clerk, a court-appointed vendor, a
33 party, or an attorney to provide the notification. In courts using a telephonic
34 tentative ruling system for law and motion matters, court notification that
35 parties must appear in person may be given as part of the court's tentative
36 ruling on a specific law and motion matter if that notification is given one
37 court day before the hearing.

38
39 **(f)(i) Private vendor; charges for service**

40
41 A court may provide teleconferencing for court appearances by entering into
42 a contract with a private vendor. The contract may provide that the vendor

1 may charge the party appearing by telephone a reasonable fee, specified in
2 the contract, for its services.

3
4 **~~(g)~~(i) Audibility and procedure**

5
6 The court must ensure that the statements of participants are audible to all
7 other participants and that the statements made by a participant are identified
8 as being made by that participant.

9
10 **~~(h)~~(k) Reporting**

11
12 All proceedings involving telephone appearances must be reported to the
13 same extent and in the same manner as if the participants had appeared in
14 person.

15
16 **~~(i)~~(l) Conference call provider**

17
18 A court, by local rule, may designate a particular conference call provider
19 that must be used for telephone appearances.

20
21 **~~(j)~~(m) Information on telephone appearances**

22
23 The court must publish notice providing parties with the particular
24 information necessary for them to appear by telephone at conferences,
25 ~~and~~ hearings, and proceedings in that court under this rule.

26
27 **Rule 3.722. Case management conference**

28
29 **(a)–(b) * * ***

30
31 **(c) Preparation for the conference**

32
33 At the conference, counsel for each party and each self-represented party
34 must appear by telephone or personally ~~or, if permitted as provided in under~~
35 ~~rule 3.670(c)(2), by telephone~~; must be familiar with the case; and must be
36 prepared to discuss and commit to the party's position on the issues listed in
37 rules 3.724 and 3.727.

38
39 **(d)–(e) * * ***

40
41 **Standard 3.1. Appearance by telephone**

1 (a)–(b) * * *

2

3 ~~(e) Types of matters desired to be heard by telephone~~

4

5 ~~Each court should specify, by local court rule or uniform local written policy,~~
6 ~~the types of motions and hearings it considers particularly suitable for~~
7 ~~hearing by telephone appearance. The rule or policy should encourage~~
8 ~~appearance by telephone in nonevidentiary civil matters if appearance of~~
9 ~~counsel in person would not materially assist in a determination of the~~
10 ~~proceeding or in settlement of the case.~~

11

12 ~~(d)(c)~~ * * *

13

14 ~~(e)(d)~~ * * *

15

Item SP07-23 Response Form

Title: Telephone Appearances in Civil Cases (amend Cal. Rules of Court, rules 3.670 and 3.722 and standard 3.1)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

Please **write** or **fax** or [respond using the Internet](#) to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102

Fax: (415) 865-7664 Attention: Camilla Kieliger

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/commentform.htm>

DEADLINE FOR COMMENT: 5:00 p.m., Friday, July 13, 2007

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.*